

ORIGINAL  
FILED

JUL 10 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

E-filing

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10  
 11 Attorneys for Defendants  
 12 World Savings Bank, FSB, Wachovia Mortgage  
 13 Corporation

ADR

14  
 15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA

17 Fred Nelli,

18 Plaintiff,

19 vs.

20 FNE Mortgage, a Massachusetts corporation  
 21 doing business in California as 1st New England  
 22 Mortgage Corporation, a.k.a. First New England  
 23 Mortgage Corporation, World Savings Bank,  
 24 FSB, Wachovia Mortgage Corporation, a North  
 25 Carolina Corporation doing business in California  
 26 as Corporation Number C1146159 and Does 1-  
 27 20, Inclusive,

28 Defendants.

Case No. C08-03342 JL  
 (Formerly Santa Cruz Superior Court Case No.  
 CV160703)

**NOTICE OF REMOVAL**

Compl. Filed: June 26, 2008  
 Attached Documents:

29  
 30 PLEASE TAKE NOTICE THAT, pursuant to provisions 1441 and 1446 of Title 28 of the  
 31 United States Code, Defendant Wachovia Mortgage, FSB, successor in interest to World Savings  
 32 Bank, FSB (Wachovia) sued erroneously herein as Wachovia Mortgage Corporation, hereby  
 33 removes the above-captioned action from the Superior Court of the State of California for the  
 34 County of Santa Cruz, Case No. 160703, to the United States District Court for the Northern District  
 35 of California. In support thereof, Wachovia alleges as follows:

1       1. On June 26, 2008, Fred Nelli (Plaintiff), filed the above-captioned case in the  
2 Superior Court of the State of California for the County of Alameda (Case No. 160703). A true and  
3 correct copy of Plaintiff's Complaint and the rest of the superior court case file is attached hereto as  
4 Exhibit A.

5       2. A true and correct copy of Wachovia's Answer to the Complaint, which was filed in  
6 the Santa Cruz Superior Court on July 8, 2008, is attached hereto as Exhibit "B".

7       3. No further proceedings have been had in this action.

8       4. Plaintiff's suit against Wachovia and First New England Mortgage Corporation  
9 (FNE) alleges, *inter alia*, breach of statutory duties by each named defendant under the federal Truth  
10 In Lending Act, 15 USC Section 1602 *et. seq.* (TILA) and the amendments to TILA in the federal  
11 Home Owner Equity Protection Act, 15 USC Section 1635, *et. seq.* (HOEPA). The First Cause of  
12 Action in the Complaint squarely rests upon and asserts a claim for relief against all defendants,  
13 including Wachovia, for alleged violation of TILA and HOEPA and federal regulations  
14 implementing TILA. Under the First Cause of Action, Plaintiff seeks, *inter alia*, federal statutory  
15 damages and statutory equitable relief from all defendants.

16       5. Plaintiff's cause of action against Wachovia for violation of TILA and HOEPA is an  
17 action of a civil nature in which the District Courts of the United States have been given original  
18 jurisdiction, in that it arises under the laws of the United States within the meaning of 28 U.S.C.  
19 Section 1331. Section 1331 of Title 28 provides that the "district courts shall have original  
20 jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."  
21 It has long been established that defendant may remove an action where the plaintiff's claims  
22 necessarily require the resolution of a substantial federal question. *City of Chicago v. International*  
23 *College of Surgeons*, 522 U.S. 156, 163 (1997). Therefore, this is an action against Wachovia over  
24 which this court would have had original jurisdiction had it been filed initially in this court, and  
25 removal to this court is proper under the provision of 28 U.S.C. § 1441.

26       6. The two other causes of action that are asserted in the Complaint by Plaintiff against  
27 Wachovia and its co-defendant both arise out of or relate in part to the same set of alleged facts and  
28 are part of the same case and controversy as the claims in the First Cause of Action, and thus this

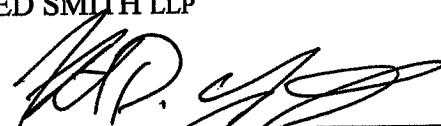
1 court may assume supplemental jurisdiction over those claims within the meaning of 28 U.S.C. §  
2 1367(a). The Second and Third Causes of Action in the Complaint are transactionally related to the  
3 First Cause of Action in that they allege, *inter alia*, that Wachovia and FNE failed to disclose that if  
4 Plaintiff made the minimum payment described in his TILA/HOEPa-required disclosures, his loan  
5 could experience negative amortization. All of the claims in the Complaint involve a common  
6 nucleus of operative facts regarding representations and disclosures to Plaintiff and the actual terms  
7 that Plaintiff agreed to with respect to his loan. Therefore, removal to this court of this entire action  
8 is proper under the provisions of 28 U.S.C. Sections 1367 and 1441.

9 7. This Notice of Removal is timely under Section 1446(b) of Title 28 of the United  
10 States Code, and controlling authority in this District, because this Notice of Removal is filed within  
11 30 days of Wachovia's receipt of Plaintiff's Complaint. *Ford v. New United Motors Manufacturing,*  
12 *Inc.*, 857 F. Supp. 707, 710-711 (N.D. Cal. 1994).

13 8. To Wachovia's knowledge, Defendant FNE has not yet been served in this action.  
14 Removal is thus proper in this action.

15 DATED: July 10, 2008.

16 REED SMITH LLP

17 By 

18 Keith D. Yandell  
19 Attorneys for Defendants  
20 World Savings Bank, FSB, Wachovia Mortgage  
21 Corporation

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**EXHIBIT A**

JUL-08-2008 16:56

SAYLER LEGAL SUC

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1 SALLY A WILLIAMS, SB NO. 129181  
 2 WILLIAMS' LAW OFFICE  
 2 POST OFFICE BOX 1478  
 3 APTOS, CA 95001-1478  
 3 555 SOQUEL AVENUE, SUITE 370  
 4 SANTA CRUZ, CA 95062  
 4 Tel. (831) 459-6096  
 5 Fax (831) 688-1772

FILED  
JUN 26 2008ALEX CALVO, CLERK  
BY  
DEPUTY, SANTA CRUZ COUNTY6 Attorneys for Fred Nelli  
 7  
 8  
 9

## SANTA CRUZ COUNTY SUPERIOR COURT

10 Fred Nelli,

11 Plaintiff,

12 vs.

13 FNE Mortgage, a Massachusetts corporation  
 14 doing business in California as 1st New England  
 15 Mortgage Corporation, a.k.a. First New England  
 16 Mortgage Corporation, World Savings Bank,  
 17 FSB, Wachovia Mortgage Corporation, a North  
 18 Carolina Corporation doing business in  
 19 California as Corporation Number C1146159  
 20 and Does 1-20, Inclusive,

21  
 19 Defendants

Case No.: CV 160703

Complaint for:

1. Rescission;
2. Misrepresentation;

22 Plaintiff Alleges:

1. Fred Nelli is a resident of Santa Cruz County, California. He is the borrower on that certain loan evidenced by a Note dated June 24, 2005 from World Savings Bank, FSB secured by his residence at 203 Arbolado Drive, Watsonville, California 95076.
2. World Savings Bank, FSB is a Federal Savings Bank doing business in the state of California, and the one who made the loan referenced in this action.



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- 1 3. Wachovia Mortgage Corporation, is on information and belief, a North Carolina
- 2 Corporation doing business in California as Corporation Number C1146159, and the
- 3 successor in interest to the loan referenced in this action.
- 4 4. FNE Mortgage, a Massachusetts corporation doing business in California as 1st New
- 5 England Mortgage Corporation, a.k.a. First New England Mortgage Corporation was,
- 6 at all times pertinent to this complaint, on information and belief, a Massachusetts
- 7 corporation doing business in California as a California Finance Lender known as
- 8 First New England Mortgage Corporation, License Number 6039533.
- 9 5. Does 1-20, inclusive are the agents, servants, principles and parents of the other
- 10 defendants and in doing the acts alleged acted within such capacities. Plaintiff does
- 11 not know the true names of the defendants sued herein as DOES 1-20, inclusive and
- 12 therefore sue these defendants by such fictitious names. Plaintiff will amend this
- 13 complaint to allege the true names and capacities of these fictitiously named
- 14 defendants when the same are known. Each of the fictitiously named defendants, in
- 15 acting with the named defendants and in doing the acts alleged or failing to do the
- 16 acts alleged, is responsible in some manner for the harm to plaintiff.

#### FIRST CAUSE OF ACTION

##### (Federal Statutory Rescission)

- 19 6. Plaintiff incorporates the allegations contained in Paragraphs 1-5, inclusive, of his
- 20 complaint as though fully set forth here.
- 21 7. On or about June 29, 2005, plaintiff Fred Nelli obtained Loan No. 0029684230 in the
- 22 amount of \$660,000.00 from World Savings, predecessor to Wachovia Mortgage
- 23 Corporation, via FNE Mortgage, a Massachusetts corporation doing business in
- 24 California as 1st New England Mortgage Corporation, a.k.a. First New England
- 25 Mortgage Corporation.
- 26 8. As part of the loan process, plaintiff was to receive disclosures as required by law,
- 27 and truthful and honest information regarding the loan for which he applied to
- 28 defendants.

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- 1 9. The Federal Truth in Lending Act "TILA", as modified by the Home Ownership and
- 2 Equity Protection Act of 1994, 15 U.S.C. §§ 1602(aa) & 1639 ("HOEPA") require
- 3 lenders disclose certain terms about the loan to potential borrowers.
- 4 10. In addition, TILA and 15 U.S.C. § 1635, as implemented under Regulation Z,
- 5 requires that lenders provide and that each borrower receive two copies of a properly
- 6 filled out Notice of Right to Cancel. The borrower must be given their fully filled out
- 7 copies of the Notice of Right to Cancel during the period of time for which the
- 8 cancellation exists.
- 9 11. When defendants FNE Mortgage, a Massachusetts corporation doing business in
- 10 California as 1st New England Mortgage Corporation, a.k.a. First New England
- 11 Mortgage Corporation and World Savings Bank, FSB, [now Wachovia Mortgage
- 12 Corporation], and Does 1-20, inclusive, caused plaintiff to sign loan documents, they
- 13 failed to provide the statutorily required notice of cancellation to plaintiff.
- 14 12. As a result of the failure to receive a properly executed notice of right to cancellation,
- 15 the statutory period of rescission applies to plaintiff's loan and plaintiff has the right
- 16 to rescind his loan up to and including June 29, 2008.
- 17 13. By this complaint, plaintiff hereby tenders his notice of rescission to FNE Mortgage,
- 18 a Massachusetts corporation doing business in California as 1st New England
- 19 Mortgage Corporation, a.k.a. First New England Mortgage Corporation, World
- 20 Savings Bank, FSB, Wachovia Mortgage Corporation, a North Carolina Corporation
- 21 doing business in California as Corporation Number C1146159 and Does 1-20,
- 22 inclusive.
- 23 14. The failure of defendants to provide properly filled out notice of right to cancel and
- 24 other disclosures is a material violation of TILA.
- 25 15. Based upon the failure of FNE Mortgage, a Massachusetts corporation doing business
- 26 in California as 1st New England Mortgage Corporation, a.k.a. First New England
- 27 Mortgage Corporation, World Savings Bank, FSB, [now Wachovia Mortgage
- 28 Corporation] and Does 1-20, inclusive to provide plaintiff with two copies of a

1 properly filled out Notice of Right to Cancel, the rescission period which would  
2 otherwise expire in 3 days, lasts for three years from the date of consummation of the  
3 loan which was consummated June 29, 2005 at the earliest. The date for rescinding  
4 the loan was thereby extended to June 29, 2008.

5 16. Pursuant to said statutes, a Notice of Rescission has been sent to FNE Mortgage, a  
6 Massachusetts corporation doing business in California as 1st New England Mortgage  
7 Corporation, a.k.a. First New England Mortgage Corporation, World Savings Bank,  
8 FSB, [by sending to Wachovia Mortgage Corporation].

9 17. By that letter and by this complaint, plaintiff has offered and does offer to perform all  
10 necessary actions required by 15 U.S.C. §1635(b); Regulation Z §§ 226.15(d)(3);  
11 226.23(d)(3), and further to restore to FNE Mortgage, a Massachusetts corporation  
12 doing business in California as 1st New England Mortgage Corporation, a.k.a. First  
13 New England Mortgage Corporation, World Savings Bank, FSB, [through Wachovia  
14 Mortgage Corporation] anything required to be restored to said defendants pursuant  
15 to statute.

16 18. This complaint is filed to preserve the rights of plaintiff for rescission pursuant to  
17 statute.

18 19. As a result of the rescission notice, the security interest in the real property at 203  
19 Arbolado Empire Grade, Santa Cruz, California, is void and World Savings Bank,  
20 FSB, [through Wachovia Mortgage Corporation, its successor in interest] is/was  
21 bound to immediately terminate such security interest. (Regulation Z, § 226.23(d) (2)).

22 20. Plaintiff further seeks a notice and accounting be prepare by defendants of all monies  
23 paid in connection with the terms of the mortgage loan which is the subject of this  
24 action, and hereby demand an itemization of such monies.

25 21. Plaintiff has been damaged by the payment of these monies, which were illegally  
26 collected by defendants as a result of the failure by defendants to abide by law in their  
27 lending practices.

28

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22. Plaintiff is informed and believes that he has been further damaged by failures to disclose material loan terms and the effect of said terms pursuant to the above stated statutes.
23. Plaintiff is also entitled to statutory civil penalties as allowed by law.
24. Plaintiff further demands reimbursement of his attorneys' fees pursuant to statute and agreement.
25. Wherefore, plaintiff seeks relief as set forth in this complaint.

**SECOND CAUSE OF ACTION**

**(State Claims for Misrepresentation)**

11. 26. Plaintiff incorporates the allegations contained in Paragraphs 1-5, and 7-17, inclusive,  
12. of his complaint as though fully set forth here.

13. 27. In the process of obtaining the subject loan, it was represented to plaintiff by FNE  
14. Mortgage, a Massachusetts corporation doing business in California as 1st New  
15. England Mortgage Corporation, a.k.a. First New England Mortgage Corporation, and  
16. on behalf of both FNE Mortgage and World Savings [now Wachovia] through Stevan  
17. Magnussen that the actual payment on the loan was \$1,138.90 every 14 days. Mr.  
18. Magnussen further advised and recommended that the minimum payment be made.  
19. He further told plaintiff that if plaintiff would pay "some extra" each payment that  
20. plaintiff would cause the loan balance to be reduced more quickly. The truth was that  
21. the amount recommended by said defendants for plaintiff to pay was not the  
22. "payment" amount but in fact was far less than the payment amount, causing the loan  
23. to increase in size and not decrease as he represented it would, despite the fact that  
24. plaintiff paid more than the payment amount each month.

25. 28. As a result of this payment schedule, despite payments being made in excess of what  
26. had been represented as the payment amount, plaintiff lost significant equity in his  
27. home through the rising mortgage amount. Rather than becoming better off

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1 financially as he was told would occur, plaintiff ended owing more money to the  
2 lender defendants for his loan.

29. Had plaintiff known the truth he would never have agreed to the loan terms.

30. By so agreeing, plaintiff has been damaged and defendants have been enriched unjustly.

31. In addition to this misrepresentation set forth above, defendants promised that the fees associated with the loan were standard and charged by all lenders.

32. Plaintiff reasonably relied upon this representation, and as a result of that reliance, as well as the reliance set forth above, proceeded to accept the terms of the loan being offered.

33. The truth was that lenders were not charging the fees that FNE Mortgage charged, and plaintiff paid more fees than he should have paid.

34. As a result of their reliance on the representations by defendants, plaintiff was damaged in an amount to be determined at trial.

Wherefore, plaintiff prays for relief as set forth in this complaint.

### THIRD CAUSE OF ACTION

## Breach of Fiduciary Duty

35. Plaintiff incorporates the allegations contained in Paragraphs 1-5, 7-17, and 27-33, inclusive, of his complaint as though fully set forth here.

36. FNE Mortgage acted as a mortgage broker in this transaction, in that it did not fund the loan and is not named in the Note issued by plaintiff. Rather, FNE Mortgage negotiated a loan with World Savings on behalf of plaintiff, informing and advising plaintiff regarding his choices and the appropriate responses to be made by plaintiff as to the terms of the loan.

37. Mortgage brokers in California owe to their client(s) a fiduciary duty. This duty requires the broker to provide honest and complete disclosure of all material terms of any loan, and also to place the interests of the client on such a level as not to gain an advantage at the expense of the client.

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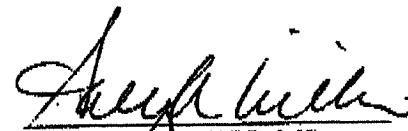
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- 1 38. Plaintiff was also owed a duty of honesty and full disclosure by the protections
- 2 offered to consumers from TILA and RESPA.
- 3 39. Defendants breached all of these duties by failing to disclose the impact of the
- 4 payment schedule, the prepayment penalty of the prior loan, and the excessive loan
- 5 initiation fees that plaintiff was paying and that these fees were negotiable within the
- 6 marketplace and that plaintiff did not need to pay the loan initiation fees charged by
- 7 defendants.
- 8 40. As a result of the failure of defendants to adhere to their fiduciary duties and the
- 9 statutorily mandated duties of open and full disclosure, plaintiff was injured in an
- 10 amount to be established at trial.

11 Wherefore, plaintiff prays:

- 12 1. For rescission of the subject loan from World Savings [now Wachovia], and an
- 13 accounting and return to plaintiff of all charges made associated with the said loan, at
- 14 which time plaintiff will provide to World [Wachovia] a return of all benefits which must
- 15 be returned under the applicable statutes
- 16 2. For damages according to proof;
- 17 3. For costs and attorneys fees pursuant to statute and/or agreement;
- 18 4. For any other such relief as the court deems just under the circumstances.

19  
20  
21 Dated this 26<sup>th</sup> day of June, 2008

22  
23  
24   
SALLY A. WILLIAMS,  
Attorney for Fred Nelli

25  
26  
27  
28

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SAYLER LEGAL SVC

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
**SALLY A WILLIAMS, SB. 129181**  
**555 SOQUEL AVENUE, SUITE 370**  
**SANTA CRUZ, CA 95062**

TELEPHONE NO.: (831) 459-6096 FAX NO.: (831) 688-1772  
 ATTORNEY FOR (Name): **FRED NELLI**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **SANTA CRUZ**  
 STREET ADDRESS: **701 OCEAN STREET**  
 MAILING ADDRESS:  
 CITY AND ZIP CODE: **SANTA CRUZ, CA 95060**  
 BRANCH NAME:

CASE NAME:  
**NELLI v FNE MORTGAGE CORPORATION**

<b>CIVIL CASE COVER SHEET</b>		<b>Complex Case Designation</b>	CASE NUMBER:
<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		<input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	<b>0160703</b>
			JUDGE:
			DEPT:

FOR COURT USE ONLY  
**FILED**  
 JUN 26 2008  
 ALEX CAIVO, CLERK  
 BY DEPUTY, SANTA CRUZ COUNTY

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> Auto Tort	<input type="checkbox"/> Contract	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Auto (22)	<input type="checkbox"/> Breach of contract/warranty (06)	<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Uninsured motorist (46)	<input type="checkbox"/> Collections (08)	<input type="checkbox"/> Construction defect (10)
<b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b>	<input type="checkbox"/> Insurance coverage (16)	<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Asbestos (04)	<input checked="" type="checkbox"/> Other contract (37)	<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Product liability (24)	<input type="checkbox"/> Real Property	<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Medical malpractice (45)	<input type="checkbox"/> Eminent domain/inverse condemnation (14)	<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<input type="checkbox"/> Other PI/PD/WD (23)	<input type="checkbox"/> Wrongful eviction (33)	
<b>Non-PI/PD/WD (Other) Tort</b>	<input type="checkbox"/> Other real property (26)	
<input type="checkbox"/> Business tort/unfair business practice (07)	<input type="checkbox"/> Unlawful Detainer	<b>Enforcement of Judgment</b>
<input type="checkbox"/> Civil rights (08)	<input type="checkbox"/> Commercial (31)	<input type="checkbox"/> Enforcement of judgment (20)
<input type="checkbox"/> Defamation (13)	<input type="checkbox"/> Residential (32)	<b>Miscellaneous Civil Complaint</b>
<input type="checkbox"/> Fraud (16)	<input type="checkbox"/> Drugs (38)	<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Intellectual property (19)	<input type="checkbox"/> Asset forfeiture (05)	<input type="checkbox"/> Other complaint (not specified above) (42)
<input type="checkbox"/> Professional negligence (25)	<input type="checkbox"/> Petition re: arbitration award (11)	<b>Miscellaneous Civil Petition</b>
<input type="checkbox"/> Other non-PI/PD/WD tort (36)	<input type="checkbox"/> Writ of mandate (02)	<input type="checkbox"/> Partnership and corporate governance (21)
<b>Employment</b>	<input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> Other petition (not specified above) (43)
<input type="checkbox"/> Wrongful termination (36)		
<input type="checkbox"/> Other employment (15)		

2. This case  is  not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a.  Large number of separately represented parties d.  Large number of witnesses  
 b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
 c.  Substantial amount of documentary evidence f.  Substantial postjudgment judicial supervision

3. Type of remedies sought (check all that apply):

a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify): 2

5. This case  is  not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 26, 2008

SALLY A WILLIAMS

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

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SAYLER LEGAL SVC

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<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ</b> Santa Cruz Branch 701 Ocean Street, Room 110 Santa Cruz, CA 95060		<i>For Court Use Only</i> <b>FILE</b> JUN 26 2008 ALEX CALVER CLERK BY DEPUTY, SANTA CRUZ COUNTY
<b>PLAINTIFF:</b> FRED NELLI  <b>DEFENDANT:</b> FNE MORTGAGE		<b>CASE NO:</b> CISCV160703
<b>CASE MANAGEMENT INFORMATION AND SETTING</b>		

This case is in Santa Cruz County's Case Management Program. It is the Duty of each party to be familiar with the California rules of court and the date, time and place of the first case management conference.

This notice must be served with the summons on all defendants and cross-defendants. Notice of any other pending case management conference must be served on subsequently named defendants and cross-defendants.

**ATTENTION DEFENDANT: YOU HAVE 30 DAYS AFTER THE SUMMONS IS SERVED ON YOU TO FILE A RESPONSE TO THE COMPLAINT. THE DATE BELOW DOES NOT EXTEND THE TIME TO FILE A RESPONSE. SEE THE SUMMONS FOR INSTRUCTIONS FOR RESPONDING TO THE SUMMONS AND COMPLAINT.**

**The first Case Management Conference hearing date is:**

**Date:** 10/24/08

**Time:** 8:29

**Department No.:** 4

**Address of the Court:**  701 Ocean Street, Santa Cruz, California

1 Second Street, Watsonville, California

*Telephonic court appearances are provided through CourtCall to the court. To make arrangements to appear at the Case Management Conference by telephone, please call the program administrator for CourtCall at (310) 572-4670 or (888) 882-6878 at least five (5) court days prior to the hearing. DO NOT CALL THE COURT.*

## THE LAWYER'S PLEDGE

In order to raise the standards of civility and professionalism among counsel and between the Bench and the Bar, I hereby pledge the following:

1. To at all times comply with the California Rules of Professional Conduct;
2. To honor all commitments;
3. To be candid in all dealings with the court and counsel;
4. To uphold the integrity of our system of justice and not compromise personal integrity for the sake of a client, case or cause;
5. To seek to accomplish the client's legitimate goals by the most efficient and economical methods possible;
6. To act in a professional manner at all times, to be guided by a fundamental sense of fair play in all dealings with counsel and the court, and to be courteous and respectful to the court;
7. To be on time;
8. To be prepared for all court appearances - to be familiar with all applicable court rules;
9. To adhere to the time deadlines set by statute, rule, or order;
10. To avoid visual displays of pique in response to rulings by the court;
11. To discourage and decline to participate in litigation or tactics that are without merit or are designed primarily to harass or drain the financial resources of the opposing party;
12. To avoid any communications with the judge concerning a pending case unless the opposing party or lawyer is present, or unless permitted by court rules or otherwise authorized by law;
13. To refrain from impugning the integrity of the judicial system, its proceedings, or its members;
14. To treat all court personnel with the utmost civility and professionalism;
15. To remember that conflicts with opposing counsel are professional and not personal - vigorous advocacy is not inconsistent with professional courtesy;
16. To refrain from derogatory statements or discriminatory conduct on the basis of race, religion, gender, sexual orientation or other personal characteristic;
17. To treat adverse witnesses and litigants with fairness and due consideration;
18. To conduct discovery proceedings as if a judicial officer were present;
19. To meet and confer with opposing counsel in a genuine attempt to resolve procedural and discovery matters;
20. To not use discovery to harass the opposition or for any other improper purpose;
21. To not arbitrarily or unreasonably withhold consent to a just and reasonable request for cooperation or accommodation;
22. To not attribute to an opponent a position not clearly taken by that opponent;
23. To avoid unnecessary "confirming" letters and to be scrupulously accurate when making any written confirmation of conversations or events;
24. To not propose any stipulation in the presence of the trier of fact unless previously agreed to by the opponent;
25. To not interrupt the opponent's legal argument;
26. To address opposing counsel, when in court, only through the court;
27. To not seek sanctions against or disqualification of another lawyer to attain a tactical advantage or for any other improper purpose;
28. To not schedule the service of papers to deliberately inconvenience opposing counsel;
29. To refrain, except in extraordinary circumstances, from using the fax machine to demand immediate responses for opposing counsel.

JUL-08-2008 16:55

SAYLER LEGAL SVC

831 384 4031 P.04

SUM-100

**SUMMONS**  
**(CITACION JUDICIAL)**

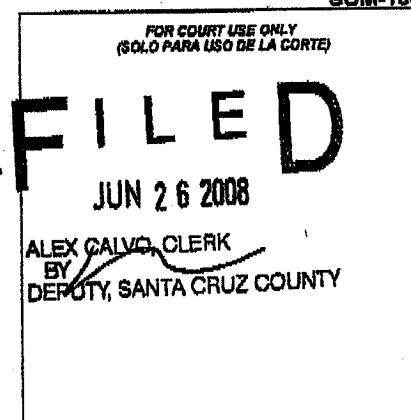
**NOTICE TO DEFENDANT:**

**(AVISO AL DEMANDADO):** FNE Mortgage, a Massachusetts corporation doing business in California as 1st New England Mortgage Corporation, a.k.a. First New England Mortgage Corporation, World Savings Bank, FSB,

Additional Parties Attachment form is attached.

**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

FRED NELL



You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/sefhelp](http://www.courtinfo.ca.gov/sefhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/sefhelp](http://www.courtinfo.ca.gov/sefhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/sefhelp/espanol](http://www.courtinfo.ca.gov/sefhelp/espanol)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/sefhelp/espanol](http://www.courtinfo.ca.gov/sefhelp/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

SANTA CRUZ COUNTY SUPERIOR COURT  
701 OCEAN STREET, SANTA CRUZ, CA 95060

CASE NUMBER  
(Número de Caso)

160703

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

SALLY A. WILLIAMS, SB 129181  
555 SOQUEL AVENUE, SUITE 370, SANTA CRUZ, CA 95062 (831) 459-6096

DATE: JUN 26 2008 SIGNED BY ALEX CALVO, Deputy  
(Fecha) (Secretario) DEBORAH HOUES, (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1.  as an individual defendant.  
2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify):

under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)

4.  by personal delivery on (date):

Page 1 of 1

JUL-08-2008 16:55

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831 384 4031 P.05

SUM-200(A)

SHORT TITLE: NELIJ v FNE Mortgage Corporation	CASE NUMBER:
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## INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff  Defendant  Cross-Complainant  Cross-Defendant

Wachovia Mortgage Corporation, a North Carolina Corporation doing business in California as Corporation Number C1146159 and Does 1-20, Inclusive

Page 1 of 1

**EXHIBIT B**

JUL-08-2008 16:50

SAYLER LEGAL SVC

831 384 4031 P.02

1 Jack R. Nelson (SBN 111863)  
 2 Email: [jnsison@reedsmith.com](mailto:jnsison@reedsmith.com)  
 3 Keith D. Yandell (SBN 233416)  
 4 Email: [kyandell@reedsmith.com](mailto:kyandell@reedsmith.com)  
 REED SMITH LLP  
 1999 Harrison Street, Suite 2400  
 Oakland, CA 94612-3572

5 Mailing Address:  
 6 P.O. Box 2084  
 Oakland, CA 94604-2084

7 Telephone: +1 510 763 2000  
 8 Facsimile: +1 510 273 8832

9 Attorneys for Defendants  
 10 World Savings Bank, FSB, Wachovia Mortgage  
 Corporation

FILED

JUL 08 2008

ALEX CALVO, CLERK  
 BY MICHELLE IRIS  
 DEPUTY, SANTA CRUZ COUNTY

REED SMITH LLP

A limited liability partnership formed in the State of Delaware

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 12 FOR THE COUNTY OF SANTA CRUZ

Fred Nelli,

Plaintiff,

vs.

13 PNE Mortgage, a Massachusetts corporation  
 14 doing business in California as 1st New England  
 15 Mortgage Corporation, a.k.a. First New England  
 16 Mortgage Corporation, World Savings Bank,  
 17 FSB, Wachovia Mortgage Corporation, a North  
 18 Carolina Corporation doing business in California  
 19 as Corporation Number C1146159 and Docs 1-  
 20, Inclusive,

Defendants.

Case No. CV160703

## ANSWER TO UNVERIFIED COMPLAINT

Compl. Filed: June 26, 2008

Honorable Paul Burdick, Dept. 4

21  
 22 Defendant Wachovia Mortgage, FSB ("Wachovia"), successor in interest to World Savings  
 23 Bank, FSB ("World") and erroneously sued as Wachovia Mortgage Corporation answers the  
 24 unverified complaint of Plaintiff Fred Nelli ("Plaintiff"), as follows:  
 25  
 26  
 27  
 28

## **GENERAL DENIAL**

Pursuant to California Civil Procedure Code Section 431.30, Wachovia generally denies each and every allegation of the Complaint. Wachovia further denies that Plaintiff is entitled to any relief against it, and denies that Plaintiff has been damaged in the nature alleged or in any other manner, or at all. Further, Wachovia denies that Plaintiff has sustained any injury, damage, or loss by reason of any conduct, action, error, or omission on the part of Wachovia and/or World, or any agent, employee or any other person acting under Wachovia's and/or World's authority or control.

## DEFENSES

1. As a first, separate, and distinct defense, Wachovia alleges that the complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted as against Wachovia and/or World.

2. As a second, separate, and distinct defense, Wachovia alleges that the complaint and each cause of action contained therein that is directed at Wachovia and/or World is barred by the applicable statutes of limitation.

3. As a third, separate, and distinct defense, Wachovia alleges that Plaintiff is barred and/or limited by contract from seeking from Wachovia and/or World the damages that Plaintiff alleges in his complaint.

4. As a fourth, separate, and distinct defense, Wachovia alleges that it and/or World owed Plaintiff no duty, sounding in either contract or tort, during the period relevant to Plaintiff's complaint, or at any time, upon which any claim against Wachovia and/or World can be based.

5. As a fifth, separate, and distinct defense, Wachovia alleges that Plaintiff is barred from any recovery because Wachovia and/or World acted reasonably and in good faith at all times material herein based on relevant facts and circumstances known to Wachovia and/or World at the time Wachovia and/or World so acted.

6. As a sixth, separate, and distinct defense, Wachovia alleges that Plaintiff's complaint, and all purported causes of action contained therein, are barred in whole or in part because the alleged damage to Plaintiff was not proximately caused by the alleged wrongful acts of Wachovia and/or World.

1       7.     As a seventh, separate, and distinct defense, Wachovia alleges that Plaintiff's alleged  
2     injuries were directly and proximately caused or contributed to by the negligence, carelessness, acts,  
3     conduct, omissions, activities, recklessness and/or misconduct of or fault of Plaintiff and/or his  
4     agent(s), whose comparative negligence or fault is sufficient to bar these claims against Wachovia  
5     and/or World and/or to eliminate or proportionately reduce Plaintiff's entitlement to recovery, if any.

6       8.     As an eighth, separate, and distinct defense, Wachovia avers that the complaint, and  
7     each cause of action therein, is barred by waiver by Plaintiff's and/or his agent(s) of the wrongs and  
8     breaches alleged, and that Plaintiff is estopped from complaining as to the actions and liabilities set  
9     forth in the complaint.

10      9.     As a ninth, separate, and distinct defense, Wachovia is informed and believes and  
11     thereon alleges that Plaintiff failed to mitigate his alleged damages as required by law.

12      10.    As a tenth, separate, and distinct defense, Wachovia alleges that Plaintiff's claims are  
13     barred by the doctrine of laches.

14      11.    As an eleventh, separate, and distinct defense, Wachovia alleges that Plaintiff's  
15     claims are barred by the equitable doctrine of unclean hands.

16      12.    As a twelfth, separate, and distinct defense, Wachovia alleges that Plaintiff would be  
17     unjustly enriched if allowed to recover on this Complaint.

18      13.    As a thirteenth, separate, and distinct affirmative defense, Wachovia alleges that  
19     Plaintiff's causes of action against Wachovia and/or World involve a federal question over which  
20     this Court lacks jurisdiction.

21      14.    As a fourteenth, separate, and distinct defense, Wachovia alleges that Plaintiff's  
22     Complaint fails to show that any alleged acts or omissions of Wachovia and/or World caused the  
23     injuries or damages claimed by Plaintiff.

24      15.    As a fifteenth, separate and distinct defense, Wachovia alleges that Plaintiff did not  
25     incur any damage or loss as a result of any act or conduct by Wachovia and/or World.

26      16.    As a sixteenth, separate, and distinct defense, Wachovia alleges that any damage or  
27     loss incurred as a result of any act or conduct by Wachovia and/or World, which damages are  
28     specifically denied herein, would be speculative and, thus, too uncertain for recovery.

1       17. As a seventeenth, separate, and distinct defense, Wachovia alleges that World's acts  
2 and omissions as alleged in the Complaint were justified and/or privileged.

3       18. As an eighteenth, separate, and distinct defense, Wachovia alleges, that with respect  
4 to the matters alleged in the Complaint, that World acted without intention of any violation of all  
5 applicable laws, regulations, applicable official commentary and government and industry standards,  
6 and that if any such violation occurred it was the result of bona fide error notwithstanding the  
7 maintenance of procedures reasonably adapted to avoid any such error.

8       19. As a nineteenth, separate, and distinct defense, Wachovia alleges that at all times  
9 relevant to the Complaint, World's conduct and activities were in good faith compliance with the  
10 applicable laws, regulations, rules and interpretations of the Federal Reserve Board and/or with  
11 interpretation or approval of a duly authorized official or employee of the Federal Reserve System,  
12 and thus cannot be deemed actionable or unlawful, unfair, fraudulent, deceptive, untrue or  
13 misleading.

14       20. As a twentieth separate, and distinct defense, Wachovia alleges that the Complaint,  
15 and each cause of action thereof, is wholly or partially barred by the applicable Statute of Frauds (to  
16 wit, Code of Civil Procedure Section 1971, and/or Civil Code Section 1624).

17       21. As a twenty-first, separate, and distinct defense, Wachovia alleges that certain  
18 conditions precedent, which may have given rise to a duty to act or liability on the part of Wachovia  
19 and/or World, did not arise.

20       22. As a twenty-second, separate, and distinct defense, Wachovia alleges that plaintiff is  
21 precluded from alleging that Wachovia and/or World is responsible for the actions and/or statements  
22 of third parties who plaintiff specifically alleges were the agent(s) of plaintiff, or from alleging that  
23 the actions and/or statements of such agent(s) may or can be imputed to Wachovia and/or World.

24       23. As a twenty-third, separate, and distinct defense, Wachovia alleges that plaintiff has  
25 failed to establish any right to actual damages in any amount.

26       24. As a twenty-fourth, separate, and distinct defense, Wachovia alleges that plaintiff has  
27 failed to meet the applicable conditions precedent to exercise any claimed right to rescind, and thus  
28 cannot seek to rescind, the loan contract alleged in the complaint

1       25. As a twenty-fifth, separate, and distinct defense, Wachovia alleges that plaintiff has  
2 failed to allege facts sufficient to state a claim for reformation of the contract at issue and/or that  
3 plaintiff is not entitled to reformation of the contract.

4       26. As a twenty-sixth, separate, and distinct defense, Wachovia alleges that all  
5 disclosures required by law or regulation were made to plaintiff with respect to the loan transaction  
6 referenced in the complaint, and that as a result plaintiff has no right to relief against Wachovia  
7 and/or World of any kind or nature.

8       27. As a twenty-seventh, separate, and distinct defense, Wachovia alleges that, if any  
9 discrepancies exist between requisite disclosure(s) and actual term(s) of any loan to plaintiff, such  
10 discrepancies are within tolerance limits set by applicable law, including, but no limited to, those set  
11 forth in the Code of Federal Regulations.

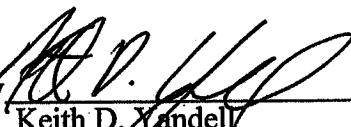
12       28. As a twenty-eighth, separate, and distinct defense, Wachovia alleges that the federal  
13 Truth In Lending Act, 15 USC Section 1602 *et. seq.* (TILA), the amendments to TILA in the federal  
14 Home Owner Equity Protection Act, 15 USC Section 1635, *et. seq.* (HOEPA) and 12 CFR 560.2  
15 preempt Plaintiff's Causes of Action against Wachovia.

16       29. Wachovia also reserves the right to assert other defenses as may become available or  
17 apparent during the course of discovery or other proceedings.

18       WHEREFORE, Wachovia demands judgment in its favor, the dismissal of Plaintiff's  
19 complaint as to Wachovia and World, costs of suit and attorneys' fees and all other relief that this  
20 Court may deem just and proper.

21       DATED: July 8, 2008.

22       REED SMITH LLP

23       By 

24       Keith D. Yandell  
25       Attorneys for Defendants  
26       World Savings Bank, FSB, Wachovia Mortgage  
27       Corporation

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 1999 Harrison Street, Suite 2400, Oakland, CA 94612-3572. On July 8, 2008, I served the following document(s) by the method indicated below:

**ANSWER TO COMPLAINT**

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.

Sally A. Williams  
Williams Law Office  
Post Office Box 1478  
Aptos, CA 95001-1478  
Tel. 831.459.6096  
Fax. 831.688.1772

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 8, 2008, at Oakland, California.

David P. Kelley